

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 IN RE: Bard IVC Filters Products Liability
10 Litigation,

No. MDL 15-02641-PHX DGC

11 _____
12 Doris Jones, an individual,
13 Plaintiff,

No. CV-16-00782-PHX-DGC

14 v.

15 C. R. Bard, Inc., a New Jersey corporation;
16 and Bard Peripheral Vascular, Inc., an
17 Arizona corporation,
18 Defendants.

ORDER

19 After a three-week trial in May, the jury in the Jones bellwether case returned a
20 verdict in favor of Defendants. Doc. 11350. Plaintiff has filed a motion to contact the
21 jurors. Doc. 11663. Defendants have filed a response. Doc. 11843. No reply has been
22 filed and neither side has requested oral argument. The Court will deny the motion.

23 **I. Background.**

24 The jurors in this case were deadlocked after ten hours of deliberation. The Court
25 conferred with the parties on how to proceed. Plaintiff urged the Court to “encourage
26 [the jurors] to keep trying to arrive at a resolution[.]” Doc. 11412 at 3. The Court
27 expressed doubt that further instructions would prove helpful given the length of
28 deliberations. Doc. 11412 at 3-5. After considering the matter further, Plaintiff’s counsel

1 asked that the Court urge the jurors to continue their deliberations. *Id.* at 6. Defense
2 counsel asked the Court to declare a mistrial. *Id.*

3 The Court chose to grant Plaintiff's request and gave the jury this Circuit's model
4 instruction for a deadlocked jury. *Id.* at 9-10; *see* Ninth Circuit Model Civil Jury
5 Instructions § 3.7 (2017). After deliberating for two more hours, the jury returned a
6 unanimous defense verdict. Doc. 11412 at 11-13; *see* Doc. 11350.

7 A month later, Plaintiff filed this motion to contact jurors pursuant to Local Rule
8 of Civil Procedure 39.2. Doc. 11663. Defendants oppose the motion. Doc. 11843.

9 **II. Legal Standard.**

10 Local Rule 39.2 requires the party seeking to interview jurors to file proposed
11 interrogatories and an affidavit setting forth the reasons for the questions. LRCiv 39.2(b).
12 The rule requires a showing of "good cause" consistent with Federal Rule of Evidence
13 606(b). *Id.*

14 Rule 606(b) "prohibits all post-verdict inquiries into a juror's deliberative
15 process." *Harris Corp. v. Indep. Techs.*, No. CV-01-2995 ER(AJWX), 2002 WL
16 31006045, at *1 (C.D. Cal. July 25, 2002) (citing *Smith v. Cupp*, 457 F.2d 1098, 1100
17 (9th Cir. 1972)). Specifically, the rule prohibits a juror from testifying about "any
18 statement made or incident that occurred during the jury's deliberations; the effect of
19 anything on that juror's or another juror's vote; or any juror's mental processes
20 concerning the verdict[.]" Fed. R. Evid. 606(b)(1). The rule contains three exceptions: a
21 juror may testify about whether (1) extraneous prejudicial information was improperly
22 brought to the jury's attention, (2) an outside influence was improperly brought to bear
23 upon any juror, or (3) there was a mistake in the verdict form. Fed. R. Evid.
24 606(b)(2)(A)-(C). Even under these limited exceptions, however, "[j]urors may not
25 testify as to how they or other jurors were affected by the extraneous prejudicial
26 information or outside influence; they may only testify as to its existence." *Hard v.*
27 *Burlington N. R.R. Co.*, 870 F.2d 1454, 1461 (9th Cir. 1989).

28 "Strong policy considerations underlie this limitation on juror testimony."

1 *Mitchell v. United States*, No. CV-09-8089-PCT-MHM, 2009 WL 2905958, at *1 (D.
2 Ariz. Sept. 4, 2009). Allowing inquiry into jury deliberations would “make what was
3 intended to be a private deliberation, the constant subject of public investigation; to the
4 destruction of all frankness and freedom of discussion and conference.” *McDonald v.*
5 *Pless*, 238 U.S. 264, 267-68 (1915); *see Tanner v. United States*, 483 U.S. 107, 127
6 (1987) (“[L]ong recognized and very substantial concerns support the protection of jury
7 deliberations from intrusive inquiry.”); *Harrod v. Ryan*, No. CV-16-02011-PHX-GMS,
8 2016 WL 6082109, at *2 (D. Ariz. Oct. 18, 2016) (“Federal courts have long recognized
9 that unduly speculative questioning of juries poses significant problems and should be
10 discouraged.”).

11 **III. Discussion.**

12 Plaintiff asked that the jurors be given an additional instruction to encourage them
13 to break the deadlock and reach a unanimous verdict. Doc. 11412 at 3, 6. Plaintiff does
14 not claim that the instruction given by the Court was improper or that any of the
15 Rule 606(b) exceptions apply. Rather, Plaintiff states that she “has some concern that
16 there was a fundamental misunderstanding by the jurors that they could hold their
17 positions and that a mistrial and another trial at a later date would result.” Doc. 11663
18 at 2. Noting that a few jurors were apparently emotional when polled about the verdict,
19 Plaintiff claims that this “suggest[s] that they would have found for Plaintiff but felt that
20 they needed to capitulate to reach a unanimous verdict[.]” *Id.* Plaintiff asserts that good
21 cause exists for the jurors to be interviewed by her attorneys. *Id.*

22 The Court does not agree. The jury was specifically instructed that they should
23 reach a unanimous verdict only if “each of you can do so without violating your
24 individual judgments and conscience.” Doc. 11412 at 9. The instruction made clear that
25 no juror should “change an honest belief as to the weight or effect of the evidence solely
26 because of the opinions of the other jurors, or for the mere purpose of returning a
27 verdict.” *Id.* at 10. The jury is presumed to have understood and followed this
28 instruction. The fact that some jurors appeared emotional might well have been the

1 product of three weeks of a difficult and complicated trial and some 12 hours of
2 deliberation.

3 Additionally, the Court finds that questioning the jurors in this case would result in
4 an intrusive inquiry into their deliberations and thought processes. The first question
5 Plaintiff seeks to ask is “what facts or arguments changed the vote of those jurors who
6 had previously favored Plaintiff?” Doc. 11663 at 2. This question goes to the heart of
7 the jury deliberations. It impermissibly seeks to discover the “juror’s mental processes
8 concerning the verdict” and the “effect of [facts and arguments] on that juror’s or another
9 juror’s vote[.]” Fed. R. Evid. 606(b)(1).

10 Other proposed questions would ask the jurors to disclose their views on the
11 weight of the evidence for the design defect claims: “What was the most important fact
12 or facts that lead you to conclude that the Eclipse was not defectively designed? Are
13 there other facts about the design of the Eclipse that you would have wanted to know?”
14 Doc. 11663 at 2 (Questions 2 and 3). Plaintiff concedes that these and the other questions
15 are designed to get the jurors to “discuss their thoughts and deliberations[.]” *Id.* at 3-4.
16 But this would “make what was intended to be a private deliberation, the . . . subject of
17 public investigation.” *McDonald*, 238 U.S. at 267. Such practices risk undermining “full
18 and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict,
19 and the community’s trust in a system that relies on the decisions of laypeople[.]”
20 *Tanner*, 483 U.S. at 120-21.

21 Finally, Plaintiff suggests that interviewing the jury will provide valuable
22 information for the parties. But that is the entire purpose of the bellwether trial process.
23 The parties will gain ample information from the outcome of the bellwether trials.

24 Plaintiff has not shown good cause for the jurors to be interviewed. The Court
25 will deny Plaintiff’s motion.

